

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 59 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

FATESINGHRAI P GAEKWAD

Versus

COMMISSIONER OF WEALTH-TAX

Appearance:

M/S. DA MEHTA, RK PATEL, BD KARIA FOR MR KC PATEL for
Petitioner
MR BJ SHELAT INSTRUCTED BY MR MANISH R BHATT for
Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 06/02/97

ORAL JUDGEMENT

(Per Rajesh Balia, J)

1. The Income Tax Appellate Tribunal has submitted statement of the case in three sets of reference applications made to it under Section 27(1) of the Wealth

Tax Act relating to question about reopening of the assessment for the assessment years 1964-65, 1965-66 and 1966-67. While applications in respect of assessment years 1964-65 and 1965-66 were at the instance of the assessee, as the assessment reopened by the assessing authority were held to be valid under Section 17(1)(b), the reference application at the instance of revenue came to be made for assessment year 1966-67 because the Tribunal having held that reopening of the assessment could take place under Section 17(1)(b), the notices issued in respect of assessment year 1966-67 were beyond the time prescribed for initiating such proceedings, hence not valid, following three questions have been referred for the opinion of this Court:

1. "Whether on the facts and in the circumstances of the case the Tribunal was justified in upholding the action of the wealth-tax officer by applying the provisions of section 17(1)(b) of the Wealth Tax Act, 1957 even though the said proceedings were admittedly reopened under Section 17(1)(a) of the Act and whether the Tribunal had jurisdiction to convert the proceedings accordingly?"
2. "If the answer to the above question (No.1) is in affirmative, whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the decision of the Gujarat High Court reported in 73 ITR 206 constituted information within the meaning of section 17(1)(b) of the Act and conferred jurisdiction upon the wealth tax officer to issue notice u/s. 17 of the Act?"
3. "Whether on the facts and in the circumstances of the case, the Appellate Tribunal had erred in coming to the conclusion that for the assessment year 1966-67 the assessment could not be reopened under Section 17(1)(a) of the Act?"

2. First two questions arise at the instance of applications made by the assessee whereas Question No.3 arise on the application of Commissioner of Wealth Tax.

3. Heard learned counsel for the parties.

4. The Wealth Tax Officer reopened the assessment under Section 17 of the Wealth Tax Act for the assessment years 1964-65, 1965-66 and 1966-67. The reasons recorded by the Wealth Tax Officer before issuing notice under

Section 17 for the assessment year 1964-65 and 1965-66 as reproduced in the order of the Tribunal reads as under:

"12.3.69 - The Maharaja had executed three trusts in February, 1958, which are as under:-

- (1) Prince Sangramsingh Marriage Trust
- (2) Prince Ranjitsingh Marriage Trust
- (3) Princess Lilita Marriage Trust

Till these trusts were executed for the marriage of the beneficiaries and after defraying the marriage expenses by the trustees, the balance was to be handed over to the wives of the beneficiaries in the first two trusts and to Princess Lalita in the third case.

The trust was revocable by the assessee after 15.3.1964. The Gujarat High Court in Wealth-tax Ref. 3 & 5 of 1965 has held that since beneficial interest is for less than six years for A.Ys. 1959-60, 1960-61 and 1961-62, the value of the assets could not be added to the W.T. assessment of the beneficiaries and accordingly deleted the addition of wealth.

Since the marriage of Princess Lalita took in May, 1964 and that Sangramsingh in December, 1964 and Prince Ranjitsingh is still unmarried and since the Maharaja had right to revoke the trust on 15.3.1964. The value of the assets consisting of the three trusts would be added to the assessment of Wealth-tax for A.Y. 1965-66."

5. For the assessment year 1966-67 reasons for initiating proceedings under Section 17 were recorded as under:

"27.4.1971 - The assessee had not correctly shown the value of Exhibition ground and Rajmahal ground. Moreover, the assessee had right to revoke the three marriage trusts, namely, Lalita Raje Marriage Trust, Prince Sangramsingh Trust and Prince Ranjitsingh Trust after 15-3-1964, and hence value of assets of these trusts are to be included in the asset.

Issue notice u/s 17 for 1965-66."

6. From the reasons recorded for the assessment year 1964-65 and 1965-66 which indicated material on which the

Wealth Tax Officer was founding his satisfaction about the escapement of wealth was the decision of Gujarat High Court in Wealth Tax Reference Nos. 3 and 5 of 1965 relating to assessment years 1959-60 and 1961-62 rendered in the case of beneficiaries of the trust created by the assessee, the property settled under the said trust being the subject matter of contention between the parties as to whether it is to be included in the wealth of the assessee or some other person. So also for the assessment year 1966-67 so far as the question about includibility of value of property settled in trust for the marriages of three children of the settlor speaks nothing except that the same are liable to be included in the wealth of the assessee. However, it may be noticed that the recording of reasons and initiation of proceedings for 1966-67 is after about 2 years of the initiation of proceedings in respect of assessment year 1964-65 and 1965-66, and noticing the fact that the assessee has disclosed the two properties referred to in the recording of reasons dated 27.4.1971 and their estimated value was also disclosed, came to the conclusion that value of such properties has not been correctly disclosed. The Tribunal after referring to the various primary facts disclosed by the assessee during the original assessment proceedings came to conclusion that the reasons recorded by the assessing officer do not disclose existence of any ground to relate the initiation of proceedings to clause (a) of Section 17(1) which is dependent on the satisfaction about failure on the part of the assessee to disclose truly and fully all material facts necessary for the assessment. However, it was of the opinion that the decision of the Gujarat High Court in the case of beneficiaries holding that the same were not liable to be assessed in the hands of beneficiaries did amount to information to be taken into consideration for reaching satisfaction about escapement of the wealth of the assessee from tax in respect of properties settled in trust which was held to be revocable before six years, and therefore, the Wealth Tax Officer could assume jurisdiction to initiate proceedings under Section 17(1)(b) of the Act. On this premise, the initiation of reassessment proceedings in respect of assessment year 1964-65 and 1965-66, were held to be valid. However, as stated above, since the issue of the notice in respect of assessment years 1966-67 was beyond the period of four years from the end of the relevant assessment year, was held to be beyond limitation prescribed for initiating such proceedings, therefore, reassessment in consequence of the said proceedings was set aside.

7. So far as Question No.1 is concerned law is well

settled that mere reference to wrong section would not render the initiation of proceedings invalid if on facts the exercise of jurisdiction can be traced to the power that exists under the statute. The notice or the reasons do not mention whether the jurisdiction is exercised under clause (a) or clause (b) of subsection (1) of Section 17 of the Act. In this connection reference may be made to the decision of this Court in the case of Commissioner of Wealth-tax, Gujarat III v. Chhatrashal Sinhji D. Zala reported in 135 ITR 826, wherein the court held that it is immaterial whether a notice for the reopening of assessment is issued under section 17(1)(b), if the set of facts disclosing the reasons may form the basis for an inference under section 17(1)(a) and may also constitute 'information' under section 17(1)(b).

8. We therefore answer Question No.1 in the affirmative, that is to say, in favour of the revenue and against the assessee.

9. So far as Question No.2 is concerned, we have no hesitation in coming to the conclusion that in the facts and circumstances of the case decision of Gujarat High Court in case of Prince Ranjit Singh P. Gaekwad and Others reported in 73 ITR 206 in Income Tax References Nos. 3 and 5 of 1965 relating to taxability of the properties in the hands of the beneficiaries settled by the assessee do constitute information relevant for the assessee's own assessment for wealth tax. The controversy directly related to whether on settling the trust the property itself stood transferred to the trustees or beneficiaries so as to vest in them irrevocably to be taxed in the hands of transferees or continue to be taxed in the hands of the settlers under the provisions of the Wealth Tax Act. The adequacy or sufficiency of the information to hold the belief is not the relevant consideration for examining the validity of initiation of proceedings. If it can be said that there was some material, which was relevant for the purpose of holding satisfaction about escapement of wealth from assessment of tax, was before the assessing officer, he acquires jurisdiction to initiate reassessment proceedings, in the matter of alleged escapement of wealth from tax. No other authority can examine the issue as an appellate authority about the existence of such satisfaction on the basis of sufficiency or adequacy of material or information above, so long there is nexus of relevancy exist with the material. That the decision of the High Court on question of law it constitute an information within the meaning of Section 17(1)(b) now stands concluded by decisions of Supreme Court in Indian

and Eastern Newspaper Society v. Commissioner of Income-Tax, New Delhi reported in 119 ITR 996 and A.L.A. Firm v. Commissioner of Income-tax reported in 189 ITR 285. Accordingly, Question No.2 is also answered in affirmative, that is to say, in favour of the revenue and against the assessee.

10. Coming to Question 3, we may at the outset notice that in any of the orders recorded by the Wealth Tax Officer in whom alone the jurisdiction to initiate reassessment proceedings vest, and for the purpose of judging the validity of initiation of such proceedings the only consideration germane is the satisfaction reached by the initiating authority. It is apparent that the assessing authority has nowhere recorded that any escapement of wealth from assessment to tax has resulted on account of failure or omission on the part of the assessee in disclosing truly and fully all material facts necessary for such assessment. The law is well settled that duty to disclose truly and fully all material facts necessary for assessment do not travel beyond disclosing primary facts. The assessee is not under an obligation to inform what legitimate inferences that can be drawn from such primary facts nor he is under a duty to invite enquiry into the estimate of value submitted by him in respect of any asset, included in his net wealth as per return. The reasons recorded on 27.4.1971 itself shows that the assessee had disclosed the assets concerned in his wealth and has also disclosed estimated value which according to him prevailing on the valuation date. The fact that originally assessing authority has accepted that valuation to be correct and later on on certain information finds it to be incorrect does not result in any omission or non-disclosure on the part of the assessee of any primary fact which would be necessary for assessment. Value of any asset on any particular valuation date is matter of estimate. We are fortified in our aforesaid view by decision of this court in Chhatrshal Sinhji D. Zala (supra) wherein the court held that where an assessee has furnished his return for an assessment year disclosing his property as an asset and offered its estimated value for Wealth Tax and the Wealth Tax Officer has completed assessment after accepting such valuation it cannot be said that the assessee had omitted or failed to disclose truly and fully all material facts necessary for assessment of net wealth.

11. Though the adequacy or sufficiency of material may not be the subject matter of judicial scrutiny but existence of such material for reaching a satisfaction required under Section 17 has to be shown. As disclosed

to us for reaching the satisfaction that the assessee had not correctly shown the value of Exhibition ground in the context of Section 17(1)(a), there was no material before the assessing officer to reach this conclusion to bring the case within Section 17(1)(a). From the reason recorded, firstly no satisfaction about failure or omission on part of assessee to disclose truly and correctly material facts have been recorded. Nor any material has been referred to or disclosed on the basis of which the assessing authority could record his satisfaction that estimated value disclosed by assessee was incorrect to his knowledge.

12. We are in agreement with the finding of the Tribunal that the reopening of assessment for the assessment year 1966-67 also could not be traced to Section 17(1)(a). It is not in dispute that if the initiation of proceedings fall within the province of section 17(1)(b), the notice was issued beyond limitation and the assessment in pursuance thereof could not be sustained. Accordingly, we answer Question 3 also in negative, that is to say, in favour of the assessee and against the revenue.

13. Accordingly this reference stands disposed of with no order as to costs.